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No. 81-2287

In the Supreme Court of the United States

OCTOBER TERM, 1982

WILLIAM ROBERT WOOLERY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing a pretrial motion to suppress evidence obtained after government agents had stopped an automobile and detained petitioner.

Petitioner was charged in a two-count indictment returned in the United States District Court for the Southern District of Texas with importation of cocaine, in violation of 21 U.S.C. 952(a), and possession of cocaine with intent to distribute, in violation of 21 U.S.C. 846. Following an evidentiary hearing, the district court ruled that government agents had illegally stopped an automobile and arrested petitioner. It thereupon suppressed as evidence all items seized from the automobile, including narcotics paraphernalia and a gun, and also suppressed a subsequent lineup identification of petitioner (Pet. App. C1-C4). The court of appeals reversed, 670 F. 2d 513 (Pet. App. A1-A7).

Petitioner contends (Pet. 3-10) that the court of appeals improperly ignored the factual findings of the district court when it concluded that the agents' stop and search of petitioner's automobile were lawful. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1982

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[1]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

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